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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Agenda item 13 (c)

CONCLUDING ITEMS:

ADOPTION OF THE REPORT ON THE FORTY-NINTH SESSION

Draft report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-ninth session

Rapporteur: Mr. Marc Bossuyt

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* E/CN.4/Sub.2/1997/L.10 and Addenda contain the draft chapters of the report relating to the organization of the session and the various items on the agenda. Resolutions and decisions adopted by the Sub-Commission, as well as draft resolutions and decisions for action by, and other matters of concern to, the Commission on Human Rights, will be contained in documents E/CN.4/Sub.2/1997/L.11 and Addenda.

IV. QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

1. The Sub-Commission considered item 2 at its 3rd to 4th, 5th, 6th, 7th, 8th, 9th, 22nd, 23rd, 24th and 33rd meetings on 5 to 6, 7, 8, 11, 20, 21 and 27 August 1997.

2. For the list of documents issued under item 2, see annex ... to the present report.

3. In the general debate on the item, statements were made by the following members of the Sub-Commission: Mr. Ali Khan (8th), Mr. Bossuyt (7th), Ms. Daes (4th), Mr. Eide (5th), Mr. El-Hajjé (8th), Mr. Fan Guoxiang (3rd and 5th), Ms. Forero Ucros (7th), Mr. Guissé (4th), Ms. Gwanmesia (8th), Mr. Joinet (8th), Mr. Khalifa (4th), Ms. Palley (7th), Mr. Park (8th), Mr. Weissbrodt (7th).

4. The Sub-Commission also heard statements by representatives of the following non-governmental organizations: African Commission of Health and Human Rights Promoters (6th), Afro-Asian Peoples' Solidarity Organization (4th), American Association of Jurists (4th), Association for the Prevention of Torture (5th), Association for World Education (3rd), Centre Europe-Tiers Monde (5th), FoodFirst Information and Action Network (4th), France-Libertés: Fondation Danielle Mitterand (4th), Franciscans International (6th), Habitat International Coalition (4th), International Association of Democratic Lawyers (4th), International Association of Educators for World Peace (4th), International Association for Religious Freedom (4th), International Commission of Jurists (4th), International Educational Development, Inc. (6th), International Falcon Movement-Socialist Educational International (6th), International Federation of Action of Christians for the Abolition of Torture (5th), International Federation of Human Rights Leagues (4th), International Institute for Peace (9th), International Islamic Federation of Student Organizations (5th), International League for the Rights and Liberation of Peoples (5th), International PEN (5th), International Prison Watch (6th), International Progress Organization (5th), International Work Group for Indigenous Affairs (6th), Inter-Parliamentary Union (5th), Liberation (5th), Minority Rights Group (5th), Movement against Racism and for

Friendship among Peoples (5th), North South XXI (5th), Pax Christi International (5th), Pax Romana (5th), Society for Threatened Peoples (3rd), Survival International Limited (5th), Women's International Democratic Federation (4th), World Federation of Democratic Youth (6th), World Muslim Congress (5th), World Society of Victimology (5th), Worldview International Foundation (5th).

5. The Sub-Commission heard statements by the observers for: Armenia (8th), Azerbaijan (8th), Bangladesh (9th), China (7th), Colombia (8th), Egypt (7th), Indonesia (8th), Iraq (8th), Jordan (8th), Pakistan (8th), Sri Lanka (8th), Syrian Arab Republic (7th), Tunisia (7th), Turkey (8th). The Sub-Commission also heard a statement by the observer for Palestine (7th).

6. Statements equivalent to a right of reply were made by the observers for: Algeria (9th), Angola (9th), Armenia (9th), Azerbaijan (9th), Bahrain (9th), China (9th), Mexico (9th), Saudi Arabia (9th), Turkey (9th), United Republic of Tanzania (9th).

Voting on proposals under agenda item 2

7. At the 23rd meeting, on 20 August 1997, Mr. Eide proposed, in writing, that a decision be taken by the Sub-Commission to vote by secret ballot, whenever such a vote was requested, on proposals pertaining to allegations of violations of human rights in countries, under any agenda item, including proposals of a procedural nature relating to proposals of a substantive nature.

8. Statements in this connection were made by Mr. Alfonso Martínez, Ms. Attah, Mr. Joinet and Ms. Warzazi.

9. The text of the draft decision as proposed by Mr. Eide, was adopted without a vote. For the text of the decision, see chapter II, section B, decision 1997/....

Monitoring the transition to peace in Guatemala

10. At its 22nd meeting, on 20 August 1997, the Chairman, on behalf of the Sub-Commission, made the following statement on respect for human rights and the conclusion of the peace process in Guatemala:

> "The Sub-Commission on Prevention of Discrimination and Protection of Minorities has authorized me to issue, in connection with agenda item 2, the statement by the Chairman on the situation of human rights in Guatemala and the conclusion of the peace negotiations.

To the great satisfaction and delight of the People of Guatemala and of the international community, the signing in Guatemala City on 29 December 1996 of the Final Agreement on a Firm and Lasting Peace put an end to 36 years of armed conflict and to a process of negotiations that started in April 1991. Recognition must go to the efforts carried out by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), as well as to the contribution made by the United Nations Moderator, the Group of Friendly Countries and the Civil-Society Assembly.

We also welcome the signing of the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements and it is our hope that compliance with the Agreement will lay the foundations for a solution to the country's social and economic problems, along with security and the administration of justice, providing continuity and strengthening the peace-building process in Guatemala.

Equally welcome is the report to the Secretary-General of the United Nations by MINUGUA (document A/51/936, of 30 June 1997), which contains the results of the verification of compliance with the Peace Agreements in the first phase of the Implementation Timetable and highlights the efforts made by the Government of Guatemala, URNG and other sectors in ensuring effective compliance.

The United Nations Mission in Guatemala (MINUGUA) deserves special recognition and support for the work of verifying compliance with the agreements signed between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca and for its many activities in strengthening institutions.

I should also like to point out that, on 20 August 1996, after learning of the agreement reached by the representatives of the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), at the last session the members of the Sub-Commission adopted decision 1996/106, on monitoring the transition to peace in Guatemala, from which I would like to emphasize the following points:

(i) The Sub-Commission authorized the Chairman to issue a statement in connection with agenda item 6 on the situation of human rights and the progress of the peace process in Guatemala;

(ii) The Sub-Commission urged the Government of Guatemala to intensify its efforts to combat and to prevent violations of fundamental human rights, particularly those affecting the right to life and to the integrity and security of the person; to continue to combat impunity and to prevent the proclamation of amnesties or of any other mechanism that grants impunity to violators of human rights;

(iii) The Sub-Commission also encouraged the Government of Guatemala and URNG to plan and implement, in the relevant negotiations, arrangements for a ceasefire, the demobilization of military personnel and their return, together with former combatants, to civilian life, guaranteeing their full enjoyment of civil and political rights;

(iv) Lastly, the Sub-Commission decided to continue to follow the development of events in Guatemala and to observe the building of a firm and lasting peace.

It is gratifying that the recommendations contained in the decision and in the statement were heeded, both by the Government and by URNG. What is more, with the signing of the Agreement on a Firm and Lasting Peace, in addition to the Comprehensive Agreement on Human Rights signed and operative since March 1994, the following agreements entered into force:

The Agreement on Resettlement of Population Groups Uprooted by the Armed Conflict;

The Agreement on the Establishment of a Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused Suffering to the Guatemalan Population;

The Agreement on the Identity and Rights of the Indigenous Peoples;

The Agreement on Social and Economic Aspects and the Agrarian Situation;

The Agreement on the Strengthening of Civilian Power and on the Role of the Army in a Democratic Society;

The Agreement on the Definitive Cease-Fire;

The Agreement on Constitutional Reforms and the Electoral Regime;

The Agreement on Bases for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca;

The Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements.

At the conclusion of the consideration of the human rights situation in Guatemala by this Sub-Commission, mention should be made of the progress achieved during the period of the implementation of the Agreements. The report to the Secretary-General by MINUGUA is gratifying, for it contains the results of the verification of compliance with the Peace Agreements of the first phase, completed on 15 April this year, which highlights the efforts made by the Government of Guatemala, the URNG and other sectors for effective compliance.

In April this year, the Commission on Human Rights considered the situation of human rights in Guatemala and, in particular, the historic events that have taken place there. In resolution 1997/51, of 15 April 1997, the Commission agreed to follow the situation and requested the Secretary-General to 'send a mission to Guatemala at the end of 1997, within the approved overall budget for the current biennium, to submit a report to the Commission on Human Rights at its fifty-fourth session on the evolution of the situation of human rights in Guatemala, in the light of the implementation of the peace agreements, taking into account the verification work done by MINUGUA and the information submitted by the Government of Guatemala, the Follow-up Commission on Compliance with the peace agreements, the political organizations and the non-governmental human rights organizations, as well as on the implementation on the agreement on the provision of advisory services in the field of human rights, signed by the Government of Guatemala and the United Nations High Commissioner for Human Rights, with a view to concluding the consideration of the case of Guatemala in the agenda of the Commission'.

In this respect, we welcome the Guatemalan Government's decision to make all facilities available to the mission that the

Secretary-General will appoint to fulfil its mandate properly. Both sides stated that the mission could include members of our Sub-Commission who are available to form part of the mission at the end of 1997.

The Sub-Commission recognizes the efforts of the Government of Guatemala and urges it to continue with its policy of implementing measures for the protection and promotion of both individual and collective human rights and fundamental freedoms; to continue to take practical measures against poverty and to eradicate extreme poverty in order to raise the living standards of the population; and to redouble the efforts already instituted to overcome the marginalization and discrimination to which the indigenous peoples of Guatemala have been, and continue to be subjected.

However, we express our concern that, despite those efforts, problems and obstacles to the full observance of human rights in Guatemala still exist, as noted in the reports of MINUGUA and other national and international human rights bodies. The enjoyment of human rights by the Guatemalan population at large is still insecure and government efforts to combat crime and impunity, while far-reaching and intensive, have been only partially successful. The continued general level of criminal violence is still the source of acute public insecurity and lack of confidence in the rule of law.

The human rights situation will continue to call for major and sustained efforts if there is to be any significant improvement. However, the Sub-Commission is gratified that, with the signing of the peace and the conclusion of the relevant agreements, both sides have undertaken to make Guatemala a country in which the observance, protection and promotion of human rights and fundamental freedoms are fully realized. Accordingly, both sides propose, with the support of the national and international human rights community, to achieve significant results before the fifty-fourth session of the Commission on Human Rights.

In this connection, the Government has stated that, in August 1997, an expanded permanent forum was set up for the exchange of views with governmental and non-governmental human rights organizations and the joint study of measures that could be taken to protect and

promote human rights. As one of these measures, the Centre for Human Rights is also requested to implement the agreement on the provision of human rights advisory services concluded between the High Commissioner for Human Rights and the Government of Guatemala.

The Sub-Commission has also learned of the creation of a Commission to clarify objectively, equitably and impartially human rights violations and acts of violence linked with the armed confrontation which have caused suffering to the Guatemalan people. We welcome that momentous step in the implementation of the peace agreements and offer our full cooperation to the Commission in discharging its mandate, including information gathered by members of the Sub-Commission and advisory services in the field of human rights, when necessary. Accordingly, the Sub-Commission requests its experts to include consideration of Guatemala in any specific reports which they may submit on various topics, as an example of a country in transition to full observance of human rights. It also requests the Government of Guatemala, URNG and all interested parties in Guatemala to provide the Commission with full cooperation and information. In particular, it urges Guatemalan society and international agencies to provide all available information, including that of a confidential nature.

Finally, the Sub-Commission, profoundly interested in the establishment of peace and full observance of human rights in Guatemala, a country which has been a major item on its agenda in recent years, would be grateful if bodies following up the process of implementing the peace accords would provide the Sub-Commission with their reports, for its information.

The members of the Sub-Commission and I, as Chairman, congratulate the Government of Guatemala, URNG and all the Guatemalan people on the highly positive steps they have taken and are continuing to take. We fully appreciate the international community's support for the peace process and ask it to continue and increase its support for Guatemala, so as to ensure the full and timely implementation of the agreements signed. We are confident that the international community and national bodies will provide the financial resources essential for the implementation of all the agreements, beginning with the initial agreement signed in Mexico City in April 1991.

In this connection, it is of special and fundamental importance that the Government of Guatemala and civil society, with the support of the international community, should continue the current efforts to bring about the full integration of members of URNG into civilian life in conditions of dignity and safety.

The same conditions should also be established to enable all ex-combatants and demobilized members of the Guatemalan armed forces to become integrated into civilian life in programmes which contribute to national development.

We wish Guatemala full enjoyment of human rights, the expansion and strengthening of democratic institutions, the full development of all its people and the building and consolidation of peace."

11. In this connection, statements were made by the observer for Guatemala and a representative of the Unidad Revolucionaria Nacional Guatemalteca (URNG).

Situation of human rights in Turkey

12. At its 23rd meeting, on 20 August 1997, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1997/L.2, sponsored by Mr. Bossuyt, Ms. Daes, Mr. Eide, Mr. Joinet, Ms. Palley and Mr. Weissbrodt, which read as follows:

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Reaffirming that all Member States have an obligation to promote and protect human rights as stated in the Charter of the United Nations and as elaborated in the Universal Declaration of Human Rights and other applicable human rights instruments,

Mindful that Turkey is a party to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the European Convention on Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the four Geneva Conventions of 1949,

Recalling that the Committee against Torture stated in 1993, after making its first on-site visit to any country, that torture was "systematic" in Turkey (A/48/44/Add.1),

Recalling also the concerns expressed in recent years by the Special Rapporteur on the question of torture; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Enforced or Involuntary Disappearances; and the Working Group on Arbitrary Detention of the Commission on Human Rights,

Recalling further the concern expressed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, following his visit to Turkey from 20 to 25 September 1996, at consistent and credible reports about the harassment, persecution and sometimes death or torture of press professionals, writers, journalists, human rights advocates and witnesses to alleged human rights violations, and the use of disproportionate violence against journalists and protesters during demonstrations (E/CN.4/1997/31/Add.1),

Aware that the European Committee for the Prevention of Torture described the incidence of torture and other ill-treatment in Turkey as "widespread" (1992) and a "common occurrence in police establishments in Turkey" (1996) and that the European Court of Human Rights found violations involving forced eviction and destruction of villages in south-east Turkey (Akdivar and others v. Turkey (1996)),

1. Welcomes:

(a) The amendments to the Turkish Constitution and to articles 8 and 13 of the Anti-Terror Law of 1991 which the Government of Turkey adopted in 1995, seeking to make those provisions compatible with its international human rights obligations, as well as the adoption in 1997 of new provisions by which the Government of Turkey sought to reduce periods of pre-trial detention, ensure the right of the detainee to legal assistance during pre-trial questioning, limit the competence of the State Security Courts and establish the Human Rights Coordinating Committee;

(b) The invitation by the Government of Turkey to the Working Group on Enforced or Involuntary Disappearances to visit Turkey by the end of 1997 and to the Special Rapporteur on the question of torture to visit the country by the end of 1998, and its full cooperation with the Special Rapporteur on freedom of opinion and expression during his visit to the country from 20 to 25 September 1996;

2. Expresses its concern:

(a) At reports of continuing violations of human rights and international humanitarian law, in particular systematic torture and ill-treatment in several parts of Turkey, extrajudicial executions, forced evictions, the destruction of villages, and arbitrary arrests and imprisonment of individuals exercising their right to freedom of expression;

(b) That, although much of the legal and regulatory framework necessary to combat torture is in place in Turkey, those measures have been ignored in practice, grave violations continue and the responsible persons apparently enjoy impunity;

(c) That the 1995 amendments to the Constitution and the Anti-Terror Law have not brought about fundamental change: non-violent statements, for example, about finding a just resolution of the Kurdish problem, other "separatist" statements, and even political cartoons critical of the Government remain criminal offences under the Penal Code or Anti-Terror Law and some individuals, including a parliamentarian, are still sentenced to prison terms for exercising their freedom of expression;

3. Condemns human rights abuses and violations of humanitarian law by the Kurdish Worker's Party (PKK), including assassination of individuals in several countries, forced recruitment of children to participate in fighting, threats and extortion, destruction of villages and abduction and killing of civilians, including women, children and, in particular, members of the extended families of village guards and teachers; but believes such abuses by armed opposition groups and terrorist acts should not provide the occasion or excuse for violations of non-derogable human rights and international humanitarian law;

4. Calls upon the Government of Turkey:

(a) To abide by its freely undertaken obligations under international human rights treaties and humanitarian law which, under the terms of article 90 of the Turkish Constitution, form an integral part of Turkish domestic law, in particular by respecting the right of all persons not to be subjected to extrajudicial execution, torture and

ill-treatment, involuntary disappearance, arbitrary arrest and imprisonment, forced eviction, the destruction of villages or infringements of freedom of expression;

(b) To ensure thorough and impartial investigations into all allegations of human rights violations and to bring the perpetrators to justice;

(c) To ensure that human rights and health organizations, including doctors and lawyers working on human rights cases, are free and able to perform their professional functions without intimidation, hindrance, harassment, or improper interference;

(d) To provide access for and to cooperate with a recognized humanitarian body in protecting the rights of detainees throughout the country and contributing to the protection of the civilian population in the south-east of the country;

(e) To accede to the International Covenant on Civil and Political Rights, its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights and the two Additional Protocols of 1977 to the Geneva Conventions of 1949, and to recognize the application of common article 3 of the Geneva Conventions to the armed conflict which is occurring in south-eastern Turkey, bearing in mind that article 3 states that the application of the preceding provisions shall not affect the legal status of the Parties to the conflict;

(f) To invite the Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as the Working Group on Arbitrary Detention, to visit the country in due course and to permit independent investigation of reports that the PKK has committed violations of humanitarian law and abuses of human rights;

5. Decides:

(a) To recommend that the Commission on Human Rights consider the situation of human rights in Turkey at its next session; and

(b) If the Commission is unable to take action on the situation of human rights in Turkey, to continue consideration of the matter at its fiftieth session under the same agenda item.

13. Mr. Weissbrodt orally revised the draft resolution by adding a new operative paragraph 1 (c) to read as follows: "The amnesty declared, in August 1997, for journalists in prison".

14. Statements in connection with the draft resolution were made by Mr. Eide, Mr. Joinet and Ms. Warzazi.

15. The observer for Turkey made a statement.

16. On the proposal of the Chairman, a vote was taken by secret ballot. The resolution, as revised, was rejected by 14 votes to 8, with 3 abstentions.

Situation of human rights in Algeria

17. At its 23rd meeting, on 20 August 1997, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1997/L.3, sponsored by Mr. Bossuyt, Ms. Daes, Mr. Diaz Uribe, Mr. Eide, Mr. Joinet, Ms. Palley and Mr. Weissbrodt, which read as follows:

> The Sub-Commission on Prevention of Discrimination and Protection of Minorities,
>
> Guided by the principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to which Algeria is a party,
>
> Noting, in the light of resolution 1997/22 of 11 April 1997 of the Commission on Human Rights, that Algeria is not included in the list of countries under consideration by the Commission under public procedures (E/CN.4/Sub.2/1997/33, annex),
>
> Deeply concerned by the numerous reports from a large number of reliable sources attesting that, regardless of human dignity, armed groups of religious extremists, who act in flagrant violation of the principles of tolerance of Islam, are terrorising civilian populations in order to force them to support their cause, by resorting, inter alia, to summary executions, the cruelty of which adds futile suffering to the fate of innocent victims of decapitation or throat cutting, including old people, women and children,
>
> Recalling its resolution 1996/20 of 29 August 1996 in which the Sub-Commission reaffirmed its "unequivocal condemnation of all acts, methods and practices of terrorism regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed",
>
> Recalling also that, in its resolution 40/61 of 9 December 1985, the General Assembly stated that it was mindful of the necessity of

maintaining and safeguarding the basic rights of the individual in accordance with the relevant human rights instruments and generally accepted international standards,

Increasingly concerned, in this connection, at reports indicating that, going beyond the requirements of the fight against terrorism, violations of human rights are being committed more and more frequently by certain sectors of the security forces,

Noting that the civilian population, under constant pressure and in the grip of terror, is forced in anguish to choose its side, is taken hostage and, as a consequence, is exposed, whatever action it takes, to the risk of reprisals by the different actors in the conflict,

1. Condemns with the utmost severity the odious crimes committed in a paroxysm of barbarity by terrorist groups who call themselves "Islamists" and requests that international cooperation against their accomplices abroad be intensified;

2. Urgently calls on the Algerian Government to take action in conformity with the International Covenant on Civil and Political Rights and, in particular, to prohibit blind anti-terrorist practices which can only be the source of grave violations of human rights;

3. Calls with insistence on the international community to break the wall of silence surrounding the tragedy being experienced by the Algerian people and to express its solidarity with them;

4. Consequently recommends to the Commission on Human Rights that it consider at its fifty-fourth session the question of the situation of human rights in Algeria, taking into account the exceptional seriousness of that situation;

5. Decides, should the Commission on Human Rights not take this action, to consider this question further at its fiftieth session under the same agenda item.

18. Mr. Lindgren Alves orally amended the draft resolution as follows:

(a) Replace the title by: "Violations of human rights in Algeria caused by extremist religious armed groups";

(b) Delete in the last preambular paragraph the words "is taken hostage and";

(c) Insert in operative paragraph 2, after the words "Urgently calls on the Algerian Government", the words "in the fight against terrorism";

(d) Delete from operative paragraph 2 the words: "and, in particular, to prohibit blind anti-terrorist practices which can only be the source of grave violations of human rights";

(e) Delete operative paragraph 5.

19. Mr. Bossuyt orally changed the amended title as follows: "Violations of human rights in Algeria originating in terrorist acts".

20. Statements were made in connection with the draft resolution by Mr. Alfonso Martínez, Mr. Ali Khan, Ms. Attah, Mr. Bossuyt, Mr. Chernichenko, Ms. Daes, Mr. El-Hajjé, Mr. Fan Guoxiang, Mr. Joinet, Mr. Guissé, Mr. Lindgren Alves, Mr. Mehedi, Ms. Palley and Mr. Yimer.

21. The observer for Algeria made a statement.

22. At the request of Ms. Attah, a vote was taken by secret ballot. The resolution, as amended, was rejected by 15 votes to 9, with 1 abstention.

Situation of human rights in the Congo

23. At its 23rd meeting, on 20 August 1997, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1997/L.5, sponsored by Mr. Bossuyt, Mr. Boutkevitch, Ms. Daes, Mr. Eide, Ms. Ferero Ucros, Mr. Joinet, Ms. Palley and Mr. Weissbrodt.

24. Mr. Eide orally revised the draft resolution by replacing the words "National Mediation Committee for resolution of the conflict" by the words "International Committee of Mediation for the negotiated resolution of the conflict, presided by the President of Gabon, H.E. Mr. Omar Bongo".

25. Statements in connection with the draft resolution and the revision were made by Mr. Alfonso Martínez, Ms. Attah, Mr. Bossuyt, Mr. Eide, Mr. El-Hajjé, Mr. Guissé, Mr. Khalil, Ms. Palley and Mr. Yimer.

26. At the request of Mr. Guissé, a vote was taken by secret ballot. The draft resolution, as amended, was adopted by 13 votes to 10, with 2 abstentions. For the text of the resolution see chapter II, section A, resolution 1997/1.

Situation of human rights in Bahrain

27. At its 23rd meeting, on 20 August 1997, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1997/L.8, sponsored by Mr. Bossuyt, Mr. Boutkevitch, Ms. Daes, Mr. Eide, Ms. Gwanmesia, Mr. Joinet, Mr. Maxim, Ms. Palley and Mr. Weissbrodt.

28. Statements in connection with the draft resolution were made by Mr. Bossuyt, Mr. Fan Guoxiang, Mr. Eide, Mr. El-Hajjé, Ms. Gwanmesia, Ms. Palley, Mr. Joinet and Ms. Warzazi.

29. The observer for Bahrain made a statement.

30. At its 24th meeting, on 21 August, the Sub-Commission continued its consideration of draft resolution E/CN.4/Sub.2/1997/L.8.

31. On the proposal of the Chairman a vote by secret ballot was taken. The draft resolution was adopted by 12 votes to 11, with 1 abstention. For the text of the resolution, see chapter II, section A, resolution 1997/2.

Situation of human rights in the Democratic People's Republic of Korea

32. At its 24th meeting, on 21 August 1997, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1997/L.13, sponsored by Mr. Bossuyt, Ms. Daes, Mr. Diaz Uribe, Mr. Eide, Mr. Fix Zamudio, Mr. Joinet and Mr. Weissbrodt.

33. Mr. Joinet orally revised tne draft resolution by deleting the word "first" before "periodic report" in the last preambular paragraph and in operative paragraph 2.

34. Statements in connection with the draft resolution were made by Mr. Alfonso Martínez, Ms. Attah, Mr. Eide, Mr. Fan Guoxiang, Mr. Guissé, Mr. Joinet and Mr. Park.

35. The observer for the Democratic People's Republic of Korea made a statement.

36. On the proposal of the Chairman, a vote by secret ballot was taken. The draft resolution, as revised, was adopted by 13 votes to 9, with 3 abstentions. For the text of the resolution, see chapter II, section A, resolution 1997/3.

Situation in the Palestinian and other Arab territories occupied by Israel

37. At its 24th meeting, on 21 August 1997, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1997/L.16, sponsored by Mr. Alfonso Martínez, Mr. Ali Khan, Mr. El-Hajjé, Mr. Khalil and Mr. Mehedi, which read as follows:

> The Sub-Commission on Prevention of Discrimination and Protection of Minorities,
>
> Guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the

International Covenant on Economic, Social and Cultural Rights, in particular the principles of equal rights and self-determination of all peoples,

Mindful of the principles and humanitarian provisions of the Geneva Conventions of 12 August 1949 for the protection of war victims, of the principles and provisions of international law, and of the obligations arising from the Regulations concerning the Laws and Customs of War on Lands, annexed to the Hague Convention IV of 1907,

Affirming the distinction between terrorism and the legitimate right of peoples to resist foreign occupation,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, on the Palestinian and other Arab territories occupied by Israel since 1967,

Deeply alarmed at the non-respect by Israel of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the failure to apply it to the Palestinians in the occupied Palestinian territory and to civilian persons in other occupied Arab territories,

Deeply concerned also at the decisions of the Israeli High Court of Justice of 11 January 1996 and 17 November 1996, legalizing the torture of Palestinians,

Deeply alarmed at the recent and most serious violations of human rights in the Palestinian and other occupied territories, and in particular the continued building of Israeli settlements in the occupied Palestinian territories, including Jerusalem, and the occupied Syrian Golan, and the continued detention of over four thousand Palestinians in Israeli prisons without trial,

Deeply concerned at the serious obstacles that such violations create for the peace process in the Middle East, as well as at Israel's reneging of the basis and principles of the Madrid Peace Conference,

Deeply concerned also at the most recent Israeli measures against the Palestinian people in the territories of the Palestinian authority and others, which constitute violations of human rights and of the agreements signed by the Government of Israel and the Palestine Liberation Organization,

1. Reaffirms that the recent human rights violations, in particular the persistence of Israel in maintaining and expanding its settlements and establishing new ones, are contrary to and endanger the peace process;

2. Condemns terrorism in all its forms and manifestations, including State terrorism;

3. Calls upon the Government of Israel to stop immediately all the measures taken against the Palestinian people and the Palestinian Authority;

4. Also calls upon the Government of Israel, in the light of the most dangerous situation now existing in the Middle East resulting from Israel's refusal to comply with Security Council resolution 497 (1981) and all resolutions of the General Assembly and the Commission on Human Rights relative to the occupied Syrian Golan, to desist from changing the physical character, demographic composition, institutional structure and the legal status of the occupied Syrian Golan, which constitute gross violations of the human rights and fundamental freedoms of the citizens of the Syrian Arab Republic in the occupied Syrian Golan;

5. Affirms that the realization of a comprehensive and just peace in the Middle East requires the complete withdrawal of Israel from all occupied Palestinian territory, including Jerusalem, enabling the Palestinian people to exercise their rights to self-determination and to establish their independent State, the complete withdrawal of Israel from the occupied Syrian Golan and the complete and unconditional withdrawal of Israel from the south of Lebanon and West Bekaa, in conformity with Security Council resolutions 242 (1967), 338 (1973) and 425 (1978) and in accordance with the principle of land for peace;

6. Requests the Secretary-General to provide the Sub-Commission, at its fiftieth session, with an updated list of reports, studies, statistics and other documents relating to the question of Palestine and other occupied Arab territories, with the texts of the most recent relevant United Nations resolutions and decisions and the report of the Special Committee to Investigate Israeli

Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, and with all other information relevant to the implementation of the present resolution.

38. A statement in connection with the draft resolution was made by Mr. Lindgren Alves, recalling decision 1996/115, in which the Sub-Commission decided to take no action at its forty-ninth session in respect of human rights situations which the Commission was considering under the public procedures for dealing with human rights violations.

39. Statements in connection with the draft resolution and decision 1996/115 were made by Mr. Alfonso Martínez, Mr. Bossuyt, Mr. Eide, Mr. El-Hajjé, Mr. Joinet, Mr. Lindgren Alves, and Mr. Yimer.

40. At the request of Ms. Warzazi, a vote by secret ballot was taken on whether to close the debate on procedure. The motion was adopted by 17 votes to 7, with 1 abstention.

41. Mr. Bossuyt subsequently proposed the following motion for adoption: "The Sub-Commission decides, taking into account its decision 1996/115, adopted at its forty-eighth session, to take no action on draft resolution L.16".

42. Statements in this connection were made by Mr. Alfonso-Martínez, Mr. Chernichenko, Mr. Eide, Mr. Fan Guoxiang, Mr. Guissé, Mr. Lindgren Alves, Ms. Palley and Mr. Yimer.

43. At the request of Mr. Alfonso Martínez, a vote on the motion was taken by secret ballot. The motion was adopted by 18 votes to 5, with 2 abstentions.

Situation of human rights in India

44. At its 24th meeting, on 21 August 1997, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1997/L.21, sponsored by Ms. Palley, which read as follows:

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recognizing the enormous responsibility of the United Kingdom of Great Britain and Northern Ireland for having left in the Indian sub-continent traditions of:

(i) Imperialism towards peoples and their territories;

(ii) Harsh military suppression of dissent combined with sweeping special emergency powers;

(iii) Reactionary penal laws;

(iv) Double standards of enunciating human rights and the rule of law which were formally rather than practically applied in her colonial possessions and protectorates;

(v) Unwillingness and a degree of inability to undertake real reform in the Indian sub-continent of social, cultural, economic or other institutions; and

(vi) Unrestrained capitalist and caste exploitation of labour and natural and other resources,

Recognizing also that India, after 50 years of independence, has maintained much from these traditions and has done little to correct the economic, social and cultural ills and human rights violations taking place throughout the State,

Recognizing, however that the Constitution of India contains a detailed Bill of Rights and Directive Principles of State Policy protective of human rights; that a National Commission on Minorities and a National Commission on Human Rights, together with some state human rights commissions, exist; and that there is extensive constitutional and legislative protection for Scheduled Castes and Scheduled Tribes,

1. Observes, in this fiftieth anniversary year of the independence of India, the world's second most populous State and its largest democracy, that:

(i) The Human Rights Committee, after consideration of the third periodic report of India, in its concluding observations (CCPR/C/79/Add.81, para. 23) expressed its concern at allegations that the police and other security forces do not always respect the rule of law and that in particular court orders for habeas corpus are not always complied with, particularly in disturbed areas;

(ii) The Human Rights Committee also expressed concern about the incidence of custodial deaths, rape and torture (ibid., para. 23);

(iii) The Special Rapporteur of the Commission on Human Rights on the question of torture had received information indicating that torture was practised routinely by the army, the Border Security Force and the Central Reserve

Police Forces against the vast majority of persons arrested for political reasons in Jammu and Kashmir (E/CN.4/1996/35, 9 January 1996, para. 70);

(iv) The Special Rapporteur on the question of torture continued to receive information in 1996 indicating that the security forces in Jammu and Kashmir had tortured detainees systematically and that the torture was said to be facilitated by the practice of holding detainees in temporary detention centres without access to courts, relations or medical care, while some reported torture included severe beatings, electric shocks, crushing the leg muscles with a wooden roller, burning with heated objects and rape (E/CN.4/1997/7, 10 January 1997, para. 87);

(v) The Special Rapporteur on the question of torture reported claims that detainees were rarely produced before a magistrate, despite a law requiring this to be done within 24 hours, and that since 1990 over 15,000 habeas corpus petitions had been filed but that in the vast majority of cases the authorities had not responded to the petitions (ibid., para. 88);

(vi) The Special Rapporteur on the question of torture remained concerned at the persistence of allegations of torture, followed often by death in custody (ibid., para. 90);

(vii) The Special Rapporteur on the question of torture reported claims that on no occasion had information been made public regarding instances of action taken against security force personnel in Jammu and Kashmir for acts of torture (ibid., para. 88);

(viii) The Working Group on Enforced or Involuntary Disappearances was notified by the Government of India that allegations of violations of human rights by the security forces in Jammu and Kashmir were immediately investigated, and that so far some 272 personnel had been punished (E/CN.4/1997/34, 13 December 1996, para. 183);

(ix) The total number of personnel punished has scarcely increased over the total given two years earlier to the Sub-Commission and this despite the presence of several hundred thousand active army personnel in Jammu and Kashmir;

(x) The Working Group on Enforced or Involuntary Disappearances also noted that the Supreme Court in Punjab had received a writ petition alleging the secret cremation by the Punjab police of hundreds of bodies, leading to investigation by the Central Bureau of Investigation (ibid., para. 184);

(xi) There is reliable information that 2,500 bodies, mainly of young men, were secretly cremated and that the lawyer who initiated the petition was arrested and has disappeared;

(xii) The Special Rapporteur on extrajudicial, summary or arbitrary executions has received numerous reports of violations of the right to life in India and allegations concerning deaths inflicted in custody resulting from torture and ill-treatment inflicted by police personnel during the preliminary stages of detention when access to outsiders is routinely denied, and that the alleged perpetrators in the police and armed forces enjoy virtual impunity, such violations in large number being claimed to be committed in Jammu and Kashmir, Punjab and Uttar Pradesh (E/CN.4/1996/4, para. 231);

(xiii) The Special Rapporteur on extrajudicial, summary or arbitrary executions remained deeply concerned at the reported failure of the Government to prosecute members of security forces involved in human rights violations (ibid., para. 238);

(xiv) The Special Rapporteur on extrajudicial, summary or arbitrary executions has made repeated efforts since 1993 to be invited to visit India (E/CN.4/1996/4, 25 January 1996, para. 241 and E/CN.4/1997/60, 24 December 1996, para. 22) but no invitation has materialized;

(xv) The Special Rapporteur on the question of torture has likewise made repeated requests to visit India (E/CN.4/1996/35, 9 January 1996, para. 77 and E/CN.4/1997/7, 10 January 1997, para. 90) and regrets the reluctance of the Government of India to invite him to the country, as does the Human Rights Committee (CCPR/C/79/Add.81, para. 23);

(xvi) The National Commission on Human Rights, while doing excellent investigating and recommendatory work within the scope of its mandate under the Protection of Human Rights Act, is prevented by Clause 19 from investigating directly complaints of human rights violations against the armed forces, having to request a report from the Government, while complaints to the Commission are subject to a one-year time-limit, thus preventing the investigation of many alleged past human rights violations (ibid., para. 22 and CERD/C/304/Add.13, 17 September 1996, para. 16);

(xvii) Although the Terrorist and Disruptive Activities (Prevention) Act (TADA) has lapsed, about 1,600 persons detained thereunder are still in detention under its provisions (CCPR/C/79/Add.81, para. 25), while the National Security Act and, in some areas of India, the Public Safety Act remain in force, a fact regretted by the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.13, para. 21), while the Armed Forces (Special Powers) Act has been applied to areas declared as disturbed for many years, as for example throughout Manipur since 1980 and in other areas of the State much longer, this meaning that the Government of India has in effect been using emergency powers without resorting to article 4.3 of the International Covenant on Civil and Political Rights (CCPR/C/79/Add.81, para. 19);

(xviii) The Human Rights Committee has reported that the use of special powers of detention remains widespread and has expressed concern at legislative proposals to reintroduce parts of TADA, leading to further violations of the

International Covenant on Civil and Political Rights, which is now not complied with in respect of the duty promptly to inform the person concerned of the reasons for his or her arrest and in respect of the need for due proceedings to decide to continue detention (ibid., paras. 24 and 25);

(xix) The Human Rights Committee has recommended that continued detention be determined by an impartial tribunal and that at very least there be a central register of detainees and that the International Committee of the Red Cross be admitted to all types of facilities, particularly in areas of conflict (ibid., para. 24);

(xx) Even civil proceedings (as well as criminal proceedings) may not be commenced against members of the security and armed forces acting under Special Powers without the permission of the central Government, and the Human Rights Committee has expressed its concern over this matter, noting that it contributes to a climate of impunity (ibid., para. 21);

(xxi) The Committee on the Elimination of Racial Discrimination has expressed great concern that the Government of India claims that the situation of the Scheduled Castes and Scheduled Tribes does not fall within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/304/Add.13, 17 September 1996, paras. 2 and 14);

(xxii) The Committee on the Elimination of Racial Discrimination has also expressed serious concern that Kashmiris, as well as other groups, are frequently treated, on account of their ethnic or national origin, in ways contrary to the basic provisions of the Convention (ibid., para. 15);

(xxiii) The Committee on the Elimination of Racial Discrimination has pointed out that, although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the Scheduled Castes and Scheduled Tribes, and although social and educational policies have

been adopted to improve their situation and to protect them from abuses, widespread discrimination and the relative impunity of those who abuse them, such measures have limited effect, and the Committee is particularly concerned at reports that people belonging to the Scheduled Castes and Scheduled Tribes are often prevented from using public wells or from entering cafes or restaurants and that their children are sometimes separated from other children in schools in violation of article 5 (f) of the Convention (CERD/C/304/Add.13, para. 23);

(xxiv) The Human Rights Committee has also expressed its concern that, despite measures taken by the Government, members of Scheduled Castes and Scheduled Tribes, as well as the so-called backward classes and ethnic national minorities, continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant including inter-caste violence, bonded labour and discrimination of all kinds (CCPR/C/79/Add.81, para. 15);

(xxv) The Human Rights Committee has further expressed grave concern that legislative measures to outlaw child marriages, dowry-related violence, suttee, foeticide and infanticide of females are not sufficient and that measures designed to change the attitude allowing such practices are necessary in order to protect women from all discriminatory practices including violence (ibid., para. 16);

(xxvi) The Human Rights Committee likewise expressed concern that women in India have not been accorded equality in the enjoyment of their rights and freedoms in conformity with articles 2 and 26 of the Covenant (ibid., para. 17);

(xxvii) The Human Rights Committee also expressed concern at the extent of bonded labour, as well as the fact that the incidence of this practice reported to the Supreme Court of India is far higher than was mentioned by the

Government of India in its third periodic report to the Committee, and noted its concern that eradicative measures taken do not appear to be effective in achieving real progress in the release or rehabilitation of bonded labourers (ibid., para. 29);

(xxviii) The Human Rights Committee deplored the high incidence of child prostitution or trafficking of women and girls into forced prostitution, regretting the lack of effective measures to prevent such practices and to protect victims, as well as deploring the lack of effective measures to stop the practice of Devadasi (dedication of small girls as temple prostitutes);

(xxix) The Human Rights Committee further expressed concern that there had been little progress in implementing the Child Labour (Prohibition) Act 1986 and recommended that urgent steps be taken to remove all children from hazardous occupations, together with immediate steps to implement the recommendations of the National Human Rights Commission to respect the constitutional requirement that it is a fundamental right for all children under 14 to have free and compulsory education;

2. Warmly welcomes the renewed talks between India and Pakistan under the Simla Agreements, believing that only peaceful negotiations, involving also full participation by the people of Jammu and Kashmir, can end the gross and systematic violations of human rights which have occurred and are still occurring, and also terrorism;

3. Urges the Government of India:

(i) To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(ii) To ratify the Optional Protocol to the International Covenant on Civil and Political Rights and to reconsider its extensive reservations to the Covenant referred to by the Human Rights Committee (CCPR/C/79/Add.81, para. 14);

(iii) To invite the Special Rapporteur on the question of torture to visit India within the current year;

(iv) To invite the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit India within the current year or soon thereafter;

(v) To give expedited consideration to the report of the Human Rights Committee and all its many recommendations;

(vi) To give similar consideration to the concluding observations of the Committee on the Elimination of Racial Discrimination made as long ago as 17 September 1996;

(vii) In particular, to consider strengthening the powers of the National Human Rights Commission to investigate and initiate legal proceedings in respect of any violations of human rights by whomsoever they may be committed;

(viii) To end the virtual impunity of the vast numbers of police and armed and paramilitary forces employed by the State to counter terrorism and crime;

4. Calls upon the Government of India:

(i) To ensure that its police and security forces do not use excessive or arbitrary force to counteract terrorist actions;

(ii) To act in accordance with the restrictions on the use of force and firearms set out in applicable international instruments;

(iii) To take legislative and administrative steps necessary to ensure that all cases of alleged deaths in custody, or in the course of 'encounters', and all allegations of torture, inhuman treatment and rape are promptly investigated and that criminal prosecutions in accordance with due process of law and international standards are brought against any alleged perpetrators;

(iv) To ensure that its army, other security forces and police are warned: that rape is an offence destructive of life, especially in locations and cultures where women and girl victims are forever stigmatized and irremediably damaged psychologically; that exemplary criminal punishment will be imposed on any assailant; and that officers whose men are repeatedly alleged to have been involved in such conduct

will face severe disciplinary sanctions for failing to maintain honour and order among Indian forces;

(v) To abolish the use of and any forms of restraint which are inhuman or degrading or capable of inflicting torture on the person of the detainee or prisoner;

5. Decides to recommend that the Commission on Human Rights consider the situation in India at its next session."

45. Statements in connection with the draft resolution were made by Mr. Alfonso Martínez, Ms. Attah, Mr. Chernichenko, Ms. Daes, Mr. Eide, Mr. El-Hajjé, Mr. Fan Guoxiang, Mr. Guissé, Ms. Gwanmesia, Mr. Maxim, Ms. Palley, Ms. Warzazi, Mr. Weissbrodt, Mr. Yimer.

46. Following a vote by secret ballot, no action was taken on the draft resolution (see paragraph 49 below).

Situation of human rights in Pakistan

47. At its 24th meeting, on 21 August 1997, the Sub-Commission considered draft resolution E/CN.4/Sub.2/1997/L.22, sponsored by Ms. Palley which read as follows:

"The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recognizing the enormous responsibility of the United Kingdom of Great Britain and Northern Ireland for having left in the Indian subcontinent traditions of:

(i) Imperialism toward peoples and their territories;

(ii) Harsh military suppression of dissent combined with sweeping special emergency powers;

(iii) Reactionary penal laws;

(iv) Double standards of enunciating human rights and the rule of law, which were formally rather than practically applied in her colonial possessions and protectorates;

(v) Unwillingness and a degree of inability to undertake real reform in the Indian sub-continent of social, cultural, economic or other institutions or of traditional practices and customs depriving women and girls of their rights; and

(vi) Unrestrained capitalist and feudalist exploitation of labour and natural and other resources,

Recognizing also that Pakistan, after 50 years of independence, has maintained much from these traditions and has done little to correct the economic, social and cultural ills and human rights violations taking place throughout that State,

1. Observes, in this fiftieth anniversary year of the independence of Pakistan, the world's fifth most populous State:

(i) That the Commission on Human Rights, in its resolution 1997/38 urged all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority; recalled that freedom from torture is a non-derogable right; called upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; and stressed that those who encourage, order, tolerate or perpetrate such acts must be severely punished;

(ii) That the Special Rapporteur on the question of torture in his annual reports over a number of years has reported to the Commission on Human Rights on allegations indicating that torture of persons in the custody of the police and the paramilitary and the armed forces is endemic, widespread and systematic in Pakistan, and that the majority of women held in police custody are subjected to some form of sexual abuse, including rape;

(iii) That the Special Rapporteur on the question of Torture visited Pakistan in February and March 1996 and reported that torture, including rape, and similar cruel, inhuman or degrading treatment are rife in Pakistan (E/CN.4/1997/7/Add.2, para. 96) and that this state of affairs is perpetuated by the virtual impunity from criminal sanction of the perpetrators of these grave crimes (paras. 84-98);

(iv) That the Special Rapporteur on the question of torture discovered that, contrary to assurances given him by the Government of Pakistan, bar fetters were in use in prisons (E/CN.4/1997/7/Add.2, paras. 50-62);

(v) That the Abolition of the Punishment of Whipping Act 1996, precluding courts (not prisons) from awarding a sentence of whipping 'except in cases where the punishment of whipping is provided as Hadd', permits continuation of the prescribed punishment of 100 lashes in the case of illicit sexual relations, and death by stoning, in the case of adultery;

(vi) That the Special Rapporteur on the question of torture reported that detainees were kept in unauthorized detention centres by the Federal Intelligence Agency and by the army;

(vii) That the Working Group on Enforced or Involuntary Disappearances expressed concern in its report at the failure in Pakistan to hold detainees only in officially recognized places of detention (E/CN.4/1997/34);

(viii) That the Commission on Human Rights, in its resolution 1997/61 demanded that all Governments ensure that the practice of extrajudicial, summary or arbitrary executions be brought to an end and that they take effective action to eliminate the phenomenon, and reiterated the obligation of all Governments to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions and to identify and bring to justice those responsible;

(ix) That the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern that there had been deaths in custody in Pakistan following detention in life-threatening conditions and that such deaths suggested a pattern of violence against detainees (E/CN.4/1997/60);

(x) That the Human Rights Committee of Pakistan documented 200 deaths in Karachi alone during 1995 as a result of torture in custody;

(xi) That the Special Rapporteur on the question of torture, in discussing the situation in Karachi, reported the widespread killings which allegedly occurred in police custody or in staged 'encounters' in which the police or Rangers (the paramilitary force which replaced the army in 1995), shoot and kill suspects, noting that, although the forces of law

and order are under attack and about 300 have been killed since 1992, no police are killed in such 'encounters';

(xii) That the Working Group on Arbitrary Detention decided that 6 persons who were Ahmadis were arbitrarily detained for exercising their freedom of conscience and that 125 other persons were similarly detained, accused of blasphemy under section 295C of the Pakistan Penal Code (an offence carrying a mandatory death penalty) as a result of Ordinance XX (upheld by the Pakistan Supreme Court) which prohibits Ahmadis from practising or calling their faith Islam (E/CN.4/1997/4/Add.1 of 29 October 1996, Decision 63);

(xiii) That, following his visit to Pakistan, the Special Rapporteur on religious intolerance commented on the desirability of repealing capital punishment as the penalty for apostasy (E/CN.4/1996/95/Add.1);

(xiv) That the Commission on Human Rights, in paragraph 3a of its resolution 1997/18, recalling General Assembly resolution 26/55 of 25 November 1981, urged States to ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of religion and belief to all without discrimination;

(xv) That the Commission on Human Rights, in its resolution 1997/16, reaffirmed the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(xvi) That the Committee on the Elimination of Racial Discrimination in its concluding observations (CERD/C/304/Add.25, 23 April 1997) expressed concern that the policy of Pakistan to recognize only religious minorities excludes ethnic, linguistic or racial groups living in the country from any specific protection under the International Convention on the Elimination of All Forms of

Racial Discrimination that would derive from official recognition of such groups as minorities, and that discrimination based on race, colour, language, or national or ethnic origin is not prohibited by the Constitution of Pakistan;

(xvii) That in the Vienna Declaration and Programme of Action, adopted in June 1993, the World Conference on Human Rights stated that the human rights of women are inalienable, integral and an indivisible part of human rights and that the eradication of discrimination on grounds of sex is a priority objective;

(xviii) That the Vienna Declaration and Programme of Action affirmed that gender-based violence is incompatible with the dignity and worth of the human person and must be eliminated and that in resolution 1997/44 the Commission on Human Rights called on States to enact and to enforce legislation or amend penal codes where necessary to ensure effective protection against rape, sexual harassment and all other forms of sexual violence against women;

(xix) That in its resolution 1997/43 the Commission on Human Rights urged States to limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women and to ensure that no reservations are incompatible with the object and purpose of the Convention, but that Pakistan has entered a reservation that its accession is 'subject to the provisions of the Constitution', and that that Constitution implicitly enshrines certain serious discriminatory practices against women;

(xx) That the Commission on Human Rights, in its resolution 1997/20, expressed its grave concern at manifestations of contemporary forms of slavery, inter alia those reported to the Working Group, and, in resolution 1997/78, called upon States to translate into concrete action their commitment to the progressive and effective elimination of all forms of exploitative child

labour and, as a matter of priority, to eliminate all extreme forms of child labour, such as forced labour, bonded labour and other forms of slavery and in addition to make primary education free and compulsory;

(xxi) That, in its resolution 1997/42, the Commission on Human Rights called upon States to take all necessary and effective measures in strict conformity with international law, including human rights standards, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomever committed;

(xxii) That it is reliably reported that the Government of Pakistan has recently failed to prevent 1,500 schoolchildren from joining the Taliban forces in Afghanistan, that Government closing its eyes to the activities of religious organizations because it has itself been backing Taliban and other forces waging a holy war in other areas;

(xxiii) That in his report, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted the deaths of children in armed combat or internal strife (E/CN.4/1997/60, para. 56);

2. Welcomes:

(i) The reaffirmation by the President and the new Government of Pakistan of the independence of the judiciary, in the light of interferences with the judiciary by the Government in office until November 1996;

(ii) The creation by the previous Government, in October 1995, of the Ministry of Human Rights and the actualization of the Government's invitation to the Special Rapporteur on the question of torture to visit Pakistan in February and March 1996, although regretting that some of those who had discussions with him were questioned by security forces about those discussions;

(iii) The directions of the Government, headed by Mr. Nawaz Sharif, to the Ministry of Human Rights to take concrete steps to implement his party's human rights policy;

(iv) The Pakistan Law Commission's unanimous recommendation to the current Government that it abandon its intention to establish special courts or tribunals outside the judicial hierarchy in order to have expeditious trials of certain criminal offences, and that the Government deferred proceeding with a bill to amend the Constitution for the purpose of creating such courts;

(v) The Pakistan Law Commission's decision to review in the future certain laws, and, following consideration of these laws, to make recommendations to the federal Government, inter alia in respect of prison reforms, the blasphemy law, laws relating to children, including child labour, and the Hudood Ordinances;

(vi) The fact that a number of senior police officers are facing charges of abuse of authority and involvement in the criminal violence in Karachi and some other areas, but notes that the killing of Mr. Mir Mutaza Bhutto and Mr. Jatoi, who were unarmed, and were killed with six of their associates, occurred in a police ambush which a judicial committee of inquiry ascribed to 'criminal negligence' rather than to murder on instructions of high authorities in the State;

(vii) The appointment of a judicial commission of inquiry into extrajudicial killings in Karachi and the other urban areas of Sindh from 19 October 1993 to 4 November 1996 (the period of Mrs. Bhutto's Administration);

(viii) The announced intention of the Government to eliminate bonded labour (this having been effectively abolished according to a series of earlier communications made to the Working Group on Contemporary Forms of Slavery) and the intention of the Government to achieve universal primary education within five years;

3. Warmly welcomes the renewed talks between Pakistan and India under the Simla Agreements, believing that only peaceful negotiations, involving also full participation by the people of Jammu and Kashmir, can end the gross and systematic violations of human rights which have occurred and are still occurring, and also terrorism;

4. Urges the Government of Pakistan:

(i) To prosecute, in accordance with due process of law and international standards, all those who have perpetrated human rights violations;

(ii) To extend the terms of reference of the Judicial Commission of Inquiry to cover extrajudicial killings from 19 June 1992 in Karachi and other urban areas of Sindh (this being the time when the army launched 'Operation Clean-Up' and when such killings began to occur on a large scale) up to the time of the appointment of the Commission of Inquiry on 23 June 1997, there being well attested reports that such killings continued after the 3 February 1997 election, including systematic killings in May and June 1997;

(iii) To ratify the International Covenant on Civil and Political Rights and its Optional Protocol;

(iv) To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(v) To ensure the passage of legislation abolishing the use of fetters and any forms of restraint which are inhuman or degrading or capable of inflicting torture on the person of the detainee or prisoner;

(vi) To repeal the Hudood Ordinances insofar as they require the imposition of whipping and other inhuman or degrading treatment by way of punishment, and in the interim to take administrative measures to ensure the impossibility of inflicting such a punishment;

(vii) To take measures promptly to ensure equality before the law for women and an end to discrimination against them in judicial proceedings and in all other respects, in particular by amending the Islamic Zina Ordinance of 1979, which makes it difficult for a woman to meet the evidentiary requirements to establish her case;

(viii) To cooperate fully in the follow-up of the Special Rapporteur on religious intolerance in relation to his recommendations made after his visit to Pakistan in 1995;

(ix) To consider amending the Penal Code and Ordinance XX in such a manner that members of the Ahmadi community may fully exercise their right to practise their religion, and to remove the possibility of exploitation of the law by other citizens to intimidate members of religious minorities;

(x) To take active measures, including amendment of legislation and administrative action, to discourage violence by religious extremists and to ensure that the police forces do not act merely as bystanders when persons and property are threatened and destroyed;

(xi) To recognize as minorities communities or groups of persons based on race, colour, language or national or ethnic origins and to accord them, as such, the protection of the Constitution and the International Convention on the Elimination of All Forms of Racial Discrimination, especially bearing in mind that the Mojahir community of Sindh is an ethno-linguistic minority and has faced severe discriminatory action by the law enforcement authorities of Sindh, in particular the police, paramilitary Rangers and State intelligence agencies;

(xii) To consider ratifying the conventions of the International Labour Organization relating to the elimination of the exploitation of child labour, particularly those concerning the minimum age for employment and especially hazardous work for children, and to eliminate child forced labour, bonded labour and other forms of slavery;

5. Calls upon the Government of Pakistan:

(i) To ensure that capital punishment will not be imposed for apostasy, and in particular to consider amending article 295 C of the Penal Code;

(ii) To ensure that so long as the death penalty is the punishment, charges under section 295 C of the Penal Code are not proceeded with, in particular in respect of Christians, Ahmadis and members of any other minority religious group currently charged under the section;

(iii) To take effective action to ensure that its territory is not used as a base and that persons under its jurisdiction, particularly children, are not recruited to engage in terrorism and violence in other States;

6. Decides to recommend that the Commission on Human Rights consider the situation in Pakistan at its next session."

48. Statements in connection with the draft resolution were made by Mr. El-Hajjé, Mr. Guissé, Ms. Gwanmesia, Ms. Palley, Ms. Warzazi.

49. At the request of Ms. Warzazi, a vote by secret ballot was taken on the following motion: "The Sub-Commission decides to take no action on draft resolutions L.21 and L.22." The motion was adopted by 20 votes to 3, with 2 abstentions.

Human rights of the Palestinian people

50. At its 33rd meeting, on 27 August 1997, the Chairman read out the following statement on behalf of the members of the Sub-Commission:

"The members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities have asked me to express our profound concern for the suffering of the Palestinian people - particularly the heads of households - men and women - who have been subjected to severe restrictions of movement and thus are unable to feed and care for their families in Gaza and in other territories occupied by Israel.

"The Sub-Commission condemns all acts of terrorism and violence, wherever they originate, wishes to condemn strongly the recent double suicide attack in Jerusalem, which caused the death of innocent people, and the blockade imposed for nearly four weeks, which penalizes innocent persons.

"The Sub-Commission, realizing the impact of the blockade on the human rights of the Palestinian people, calls upon the Government of Israel to put an end to the blockade and other measures. It also calls on all parties to make every effort so that a positive dialogue can take place once again and so that peace can be restored.

"In this regard, the Sub-Commission hopes for an early resumption of talks and the successful conclusion of a just and lasting peace in the region."